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The next step

Visiting professor Amy Bach hopes her crusading book about ineffective courts will bring about reforms

Eight years. That's how long lawyer and journalist Amy Bach spent watching the wheels of justice turn in county courts across America, from small-town Georgia to upstate New York, Mississippi to Chicago. She was drawn by a curiosity about how justice was meted out not in the white-columned upper reaches of the system, but at the most local level, in the courts of the more than 3,000 counties in the United States.

What she found, again and again, were overburdened courts resorting to assembly-line tactics in which due process is casually violated, advocacy is tepid, and a clubby legal culture compromises the quality of representation by public defenders. Not that these were ill-intentioned or incompetent people, she stresses, but their very closeness to the legal system in which they were entrenched made it impossible for them to see the ways that the rule of law was being subverted in the midst of their work.

The result of this grand investigation was *Ordinary Injustice: How America Holds Court* (Metropolitan Books, 2009). No less a personage than Doris Kearns Goodwin, author of the Lincoln biography *Team of Rivals*, called it "a crusading call for reform in the tradition of Rachel Carson's *Silent Spring* or Ralph Nader's *Unsafe at Any Speed*. . . . Amy Bach provides a fascinating range of individual stories to reveal the systemic, everyday problems in our courts that must be addressed if justice is truly to be served."

Now Bach, who is at SUNY Buffalo Law School this semester as a visiting professor under the auspices of the Baldy Center, is going beyond stating



the problem to help look for the solution. With her organization Measures for Justice (www.measuresforjustice.org), she is developing and refining performance measures that can be applied to criminal courts – an objective yardstick by which to hold individual courts accountable for the quality of their work.

"These measures are based on some of the types of dysfunction found in the book," Bach says. For example, she says, the presumption is that criminal charges should be adjudicated effectively and in a timely way; so tallying how long defendants spend in pretrial custody for certain crimes measures whether people are being held for longer than they should be because of too high bails or bond or other reasons.

The next step will be to run pilot programs to test the performance standards in everyday use. The goal, Bach says, is "to develop best practices, find ways these counties compare and get them talking to each other."

Bach is commuting to Buffalo from Rochester, where she lives with her husband and their 4-year-old son. In addition to her research, she is teaching a

section of criminal law to about 70 first-year students.

"I'm extremely impressed with the caliber of the students," she says. "They're so turned on, and they work so hard, and they're so willing to do the extra work and follow a difficult hypothetical situation." The variety of their life experiences, too, enriches the class discussion, Bach says, such as students who have children and some who know about guns.

As well, she says, the process of teaching and preparation has jogged her creative process. "Creativity happens when they're asking the basic questions," Bach says. "Why do we need intent? Why do we give a break to people who are provoked and fly off the handle? It's helpful to revisit those questions with fresh eyes, and teaching helps me do that."

One recent acknowledgment of Bach's work comes from the Public Defender's Office in Palm Beach County, Fla., which chose her to receive the 2012 Gideon Award, presented to those who "have manifested an honorable, consistent and recognizable effort to ensure equal justice for the indigent in our community." The award, named for the plaintiff in the landmark Supreme Court ruling *Gideon v. Wainwright*, which guaranteed the right to counsel for indigent defendants, reflects the challenge to do better presented in *Ordinary Injustice*. Past recipients have included Barry Scheck, co-director of the Innocence Project (and a member of O.J. Simpson's defense team), and Bryan Stevenson, executive director of the Equal Justice Initiative.